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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 CLAYTON A. LEWIS, et al.,

11 Plaintiff(s),

12 v.

13 CAESARS ENTERTAINMENT  
14 CORPORATION, et al.,

15 Defendant(s).

Case No.: 2:16-cv-02787-JAD-NJK

**ORDERS and**  
**REPORT & RECOMMENDATION**

16 Pending before the Court is the third order for Defendant Bingli Yang and her counsel  
17 (Aaron Aquino) to show cause why various sanctions should not be imposed on them. Docket No.  
18 77. On November 9, 2018, the Court held a hearing on that order to show cause and for Plaintiffs  
19 to prove up damages. Docket No. 81.

20 **I. BACKGROUND**

21 Plaintiffs and Defendant Yang have been employed as traveling poker dealers. *See, e.g.,*  
22 Compl. (Docket No. 1-1) at ¶¶ 10, 17. Plaintiffs claim Defendant Yang defamed them for the  
23 intended purpose of interfering with their future employment opportunities. *See, e.g., id.* at ¶¶ 17-  
24 48, 69-74. Plaintiffs allege that Defendant Yang's tortious conduct was particularly egregious in  
25 an encounter in March 2015, during which Defendant Yang engaged in public outbursts in which  
26 she accused Plaintiffs of, *inter alia*, theft. *See id.* at ¶¶ 19-20. Plaintiffs allege that Defendant  
27 Yang has stated that she engaged in this conduct in retaliation for Plaintiffs providing statements  
28 for a witness against Defendant Yang in an earlier employment hearing. *See id.* at ¶ 17.

1 Defendant Yang appeared in this action. *See, e.g.*, Docket No. 6 (joinder in notice of  
2 removal). Nonetheless, Defendant Yang admitted through the discovery process the key facts  
3 supporting Plaintiffs’ claim, including that she knowingly made false accusations against Plaintiffs  
4 for the purpose of interfering with their employment opportunities. *See, e.g.*, Docket No. 56 at 6.  
5 On June 7, 2018, summary judgment was entered against Defendant Yang on the issue of liability.  
6 *See id.* at 7.

7 On June 7, 2018, United States District Judge Jennifer A. Dorsey also ordered that a  
8 mandatory settlement conference be held. *Id.* On June 8, 2018, the undersigned issued an order  
9 setting that mandatory settlement conference (hereinafter, “the August settlement conference”),  
10 and establishing the requirements for that settlement conference. Docket No. 57. One of those  
11 requirements was that each party was required to submit a settlement statement containing  
12 specified information. *Id.* at 2-3. The parties’ settlement statements were due by August 1, 2018.  
13 *See* Docket No. 58 (advancing settlement conference and deadline to submit settlement  
14 statements). The Court cautioned that:

15 **FAILURE TO COMPLY WITH THE REQUIREMENTS SET**  
16 **FORTH IN THIS ORDER WILL SUBJECT THE NON-**  
17 **COMPLIANT PARTY AND/OR COUNSEL TO SANCTIONS**  
**UNDER FEDERAL RULE OF CIVIL PROCEDURE 16(f).**

18 Docket No. 57 at 3 (emphasis in original). The Court received Plaintiffs’ settlements statement,  
19 but, despite the above warning, Defendant Yang and Mr. Aquino did not submit a settlement  
20 statement.

21 Having not received a settlement statement from Defendant Yang and Mr. Aquino, on  
22 August 3, 2018, the Court ordered that they submit a settlement statement by noon on August 6,  
23 2018. Docket No. 61.<sup>1</sup> The Court again warned that “[f]ailure to comply with this order may  
24 result in the imposition of sanctions.” *Id.* Despite that warning, Defendant Yang and Mr. Aquino  
25 did not submit a settlement statement.

26  
27 <sup>1</sup> A “minute order” constitutes an order for purposes of Rule 16(f) of the Federal Rules of  
28 Civil Procedure. *See, e.g., Gfeller v. Doyne Med. Clinic, Inc.*, Case No. 2:14-cv-01940-JCM-VCF,  
2015 WL 5210392, at \*8 (D. Nev. Sept. 3, 2015).

1 Having still not received a settlement statement from Defendant Yang and Mr. Aquino, on  
2 August 6, 2018, the Court provided them one final opportunity to comply and ordered a settlement  
3 statement be submitted by 10:00 a.m. on August 7, 2018. Docket No. 62. The Court  
4 simultaneously ordered Defendant Yang and Mr. Aquino to show cause why they should not be  
5 sanctioned for violating the previous orders to submit a settlement statement. *Id.* The Court also  
6 warned that “**FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE**  
7 **INITIATION OF CONTEMPT PROCEEDINGS.**” *Id.* at 2. The threat of sanctions arising out  
8 of the prior violations and the warning against any further violation proved ineffective, as  
9 Defendant Yang and Mr. Aquino still did not submit a settlement statement.

10 The violation of the above orders resulted in the vacation of the August settlement  
11 conference. Docket No. 63. It also resulted in the issuance of a second order for Defendant Yang  
12 and Mr. Aquino to show cause why they should not be sanctioned. Docket No. 64. Mr. Aquino  
13 filed a preliminary response to the two orders to show cause identifying health problems as the  
14 cause for the noncompliance. Docket No. 67. Given the underdeveloped nature of those  
15 representations, the Court provided Defendant Yang and Mr. Aquino with an additional 30 days  
16 to file a complete response supported by declaration. Docket No. 68. Notwithstanding the  
17 provision of a lengthy extension, Defendant Yang and Mr. Aquino filed a further response that  
18 included no additional detail. Docket No. 70. Instead, they filed essentially the same response as  
19 before that was supported this time by Mr. Aquino’s declaration stating only that:

20 Due to extreme illness as stated and recounted in this response to  
21 myself and my family, deadlines in this case were not met.

22 The inability to meet these deadlines were substantially justified as  
23 the circumstances of the emergency were unavoidable and  
unforeseeable.

24 *Id.* at 4. Because the further response continued to be lacking, on September 17, 2018, the Court  
25 ordered Mr. Aquino to appear for a show cause hearing to be held on September 25, 2018. Docket  
26 No. 71. The Court also set that hearing to explore the potential for resetting the settlement  
27 conference. *See id.* at 1 n.1. Mr. Aquino failed to appear at that hearing. Docket No. 72; *see also*  
28 Hearing Rec. (9/25/2018) at 3:16 – 3:17 p.m.

1 In summary, as of late September, Defendant Yang and Mr. Aquino had violated three  
2 orders to submit a settlement statement and Mr. Aquino had violated an additional order to appear  
3 for a show cause hearing. The Court gave them several opportunities, but Defendant Yang and  
4 Mr. Aquino failed to provide any reasonable justification for their violations of these orders.<sup>2</sup>  
5 Moreover, Mr. Aquino thwarted the Court's ability to obtain a fuller explanation by violating the  
6 order to appear for a show cause hearing. *See, e.g.*, Docket No. 76 at 3 n.2. Given the  
7 circumstances, the Court ordered Defendant Yang and Mr. Aquino to pay \$3,311 in attorney's fees  
8 by October 29, 2018. *Id.* at 5. The Court further ordered Mr. Aquino to pay a fine of \$2,000 by  
9 October 29, 2018. *Id.* The Court declined at that time to recommend default judgment or to initiate  
10 contempt proceedings, but the Court issued another warning:

11 **THE COURT EXPECTS STRICT COMPLIANCE MOVING**  
12 **FORWARD WITH ITS ORDERS AND ALL GOVERNING**  
13 **RULES. FAILURE BY DEFENDANT AND/OR MR. AQUINO**  
14 **TO COMPLY MAY RESULT IN THE IMPOSITION OF**  
15 **SANCTIONS, UP TO AND INCLUDING, CASE-**  
**DISPOSITIVE SANCTIONS AND CONTEMPT**  
**PROCEEDINGS. THERE WILL BE NO FURTHER**  
**WARNINGS PROVIDED.**

16 *Id.* (emphasis in original). The Court also reset the settlement conference for November 5, 2018  
17 (hereinafter, "the November settlement conference"), and ordered Defendant Yang to submit a  
18 settlement statement by October 24, 2018. *Id.* at 6.

19 As with the August settlement conference, the November settlement conference was  
20 doomed before it could even begin. Despite the imposition of sanctions for past violations and the  
21 Court's emphatic warning against further violations, Defendant Yang and Mr. Aquino again failed  
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24 <sup>2</sup> For the reasons explained at the time, the excuses provided for violating these orders did  
25 not hold water. *See* Docket No. 76 at 3 n.2. More recent revelations expose further holes in the  
26 excuses. At the time of the previous orders to show cause, Mr. Aquino represented (without  
27 sufficient support) that he did not comply with the orders to submit a settlement statement because  
28 of his children's illness and his own later illness. *See, e.g.*, Docket No. 70. At the more recent  
show cause hearing held on November 9, 2018, however, Mr. Aquino revealed that Defendant  
Yang had refused to engage with him in the process of preparing a settlement statement for the  
August settlement conference because Defendant Yang was unhappy with her settlement options.  
*See* Hearing Rec. (11/9/2018) at 10:26 – 10:27 a.m.

1 to submit a settlement statement as ordered. Docket No. 77.<sup>3</sup> This fourth failure to submit a  
2 settlement statement required the vacation of the November settlement conference. *Id.* at 2. It  
3 also resulted in the issuance of a third order to show cause that required Defendant Yang and Mr.  
4 Aquino to appear personally to explain why the latest failure to submit a settlement statement  
5 should not result in (1) entry of default judgment, (2) initiation of contempt proceedings, (3) an  
6 award of further attorney’s fees, (4) imposition of fines of up to \$10,000 each, and (5) referral of  
7 Mr. Aquino to the Nevada State Bar for potential disciplinary proceedings. *Id.* at 1.<sup>4</sup> The Court  
8 warned that: **“FAILURE TO APPEAR AS ORDERED WILL RESULT IN THE**  
9 **IMPOSITION OF SEVERE SANCTIONS.”** *Id.* (emphasis in original).

10 Notwithstanding all of the above, Defendant Yang did not appear at the show cause hearing  
11 as ordered. *See* Docket No. 81. Mr. Aquino did appear at that hearing. *See id.* Mr. Aquino  
12 provided no justification for Defendant Yang’s violations of the Court’s orders. Instead, Mr.  
13 Aquino represented that he had been providing written and telephonic notices to Defendant Yang  
14 as to what the Court was requiring, but that Defendant Yang had ceased responding months earlier.  
15 *See, e.g.,* Hearing Rec. (11/9/2018) at 10:12 - 10:13 a.m. Mr. Aquino expressly represented that  
16 he had given Defendant Yang notice of the show cause hearing, *id.*, but Defendant Yang still did  
17 not appear. Although Mr. Aquino represented that Defendant Yang had previously indicated a  
18 willingness to defend this lawsuit, the circumstances now demonstrate that Defendant Yang has  
19 made the conscious decision to abandon this case. *See, e.g., id.* at 10:12 - 10:14 a.m., 10:24 - 10:28  
20 a.m. In short, there has been no justification provided for Defendant Yang’s continued violations  
21 of the above orders and, instead, the record demonstrates that Defendant Yang has chosen to cease  
22 participating in any defense of this case.

23 As to Mr. Aquino, he represented in vague terms that his latest noncompliance stemmed  
24 from the fact that he had been suffering from debilitating illness for several months and, in support  
25 of that representation, he presented exhibits showing two doctor’s appointments. *See, e.g., id.* at

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26 <sup>3</sup> Defendant Yang and Mr. Aquino also did not pay attorney’s fees as ordered, *see* Docket  
27 No. 78, and Mr. Aquino did not pay the fine as ordered.

28 <sup>4</sup> That hearing was also set for Plaintiffs to prove up their damages in the event default  
judgment was recommended. *See id.* at 2.

1 10:14 - 10:24 a.m. Mr. Aquino's attestation is not credible. As a threshold matter, the Court again  
2 notes that the evidence presented is flimsy and not well-developed. One exhibit submitted shows  
3 a quick care visit for Mr. Aquino on October 23, 2018, for cough, *history* of bronchiectasis, and  
4 *mild* intermittent asthma with exacerbation. Show Cause Hrg. Exh. A (emphasis added). The  
5 other exhibit is an "excuse slip" showing only that Mr. Aquino had some sort of appointment on  
6 November 2, 2018. Show Cause Hrg. Exh. B. These exhibits and Mr. Aquino's representations  
7 fall well short of showing that he was completely incapacitated throughout this time such that he  
8 could not comply with the order to submit a settlement statement by October 24, 2018.

9 Moreover, Mr. Aquino's representations are belied by the record. On October 15, 2018,  
10 the Court expressly addressed the need for Mr. Aquino to provide notice to the Court if he was  
11 truly too sick to comply with an order. *See* Docket No. 76 at 3 n.2 ("Mr. Aquino fails to explain,  
12 however, why he was unable to contact the Court or opposing counsel during this period to seek  
13 an extension of the deadline to submit settlement statements, seek a continuance of the settlement  
14 conference, or otherwise provide notice of the circumstances"). This was the same order setting  
15 the November settlement conference and ordering the submission of a settlement brief. *See id.* at  
16 6. Were Mr. Aquino so sick that he could not submit a settlement statement nine days later, on  
17 October 24, 2018, the remedy to that solution was obvious: Mr. Aquino or his staff needed to  
18 make that known to the Court. The fact that no such notice was provided seriously undercuts Mr.  
19 Aquino's representations of debilitating illness. This shortcoming is especially pronounced given  
20 that the Court did not enter the pending order to show cause for another 48 hours after the deadline  
21 to submit a settlement statement had expired, *compare* Docket No. 76 at 6 (settlement statement  
22 due by 3:00 p.m. on October 24, 2018) *with* Docket No. 77 (notice of electronic filing showing  
23 that order was issued at 3:14 p.m. on October 26, 2018), but Mr. Aquino still did not provide any  
24 notice or make any request for an extension during that additional window.<sup>5</sup>

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25  
26 <sup>5</sup> Similarly, when contacted by the undersigned's courtroom deputy upon Mr. Aquino's  
27 failure to appear at the hearing set for September 25, 2018, Mr. Aquino's staff made no mention  
28 of any medical impairment. Were Mr. Aquino actually suffering from debilitating illness for  
several months during this period, one would expect his staff to know that fact and relay it when  
contacted by the Court. Mr. Aquino had no explanation as to why his staff seemed unaware of his  
debilitating illness and, instead, relayed only having trouble in locating him.

1        Additionally, when Mr. Aquino did appear at the show cause hearing on November 9,  
2 2018, he was not slowed by illness. This was most evident when Mr. Aquino objected to Mr.  
3 Lewis' testimony to prove-up damages and provided active, engaged, and extensive cross-  
4 examination for which he had clearly expended significant time to prepare beforehand, including  
5 researching state court records. *See, e.g.*, Hearing Rec. (11/08/2018) at 10:51, 11:06, 11:14 – 11:38  
6 a.m. Mr. Aquino's assertion of a months-long debilitating illness that prevented him from  
7 submitting a settlement statement on October 24, 2018, stands in stark contrast with his ability to  
8 prepare for and extensively participate in the prove-up hearing two weeks later. In sum, the Court  
9 has provided Mr. Aquino with numerous opportunities to substantiate the assertion that he has  
10 been too sick to comply with the Court's orders, and he has failed to do so.<sup>6</sup>

11        In short, the Court has issued during this period at least five warnings to Defendant Yang  
12 and Mr. Aquino that failure to comply with the Court's orders may result in sanctions, including  
13 severe sanctions like default judgment. Docket No. 57 at 3, Docket No. 61, Docket No. 62 at 2,  
14 Docket No. 76 at 5, Docket No. 77 at 2. Despite those warnings, Defendant Yang and Mr. Aquino  
15 have collectively violated four orders to submit a settlement statement, two orders to appear for a  
16 hearing, and two orders to pay sanctions. Two of these violations (the violation of the fourth order  
17 to submit a settlement statement and Defendant Yang's violation of the order to appear at the show  
18 cause hearing) occurred after sanctions were already imposed on both Defendant Yang and Mr.  
19 Aquino.<sup>7</sup>

## 20 **II. STANDARDS**

21        Orders are not suggestions or recommendations, they are directives with which compliance  
22 is mandatory. *See, e.g., Chapman v. Pacific Tel. & Tel. Co.*, 613 F.2d 193, 197 (9th Cir. 1979);

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24        <sup>6</sup> Mr. Aquino may suffer from illness. The question is whether that illness actually  
prevented him from complying with the orders identified here. It did not.

25        <sup>7</sup> The currently-pending order to show cause addresses specifically the failure of Defendant  
26 Yang and Mr. Aquino to comply with the fourth order to submit a settlement statement. Docket  
27 No. 77 (addressing violation of Docket No. 76 at 6). The Court does not attempt to catalogue  
28 herein every violation of the applicable rules or orders in this case. Nonetheless, the Court provides  
an extensive background because its consideration of an appropriate course of action includes the  
conduct in this case beyond the particular violation at issue. *See, e.g., Adriana Int'l Corp. v.*  
*Thoeren*, 913 F.2d 1406, 1411-12 (9th Cir. 1990).

1 *see also Weddell v. Stewart*, 261 P.3d 1080, 1085 & n.9 (Nev. 2011). There are several sources of  
2 legal authority by which federal courts enforce their orders. Most pertinent here, Rule 16(f) of the  
3 Federal Rules of Civil Procedure provides for sanctions for failing to obey a “scheduling or other  
4 pretrial order.” Fed. R. Civ. P. 16(f)(1)(C). When attorneys or parties fail to comply with an order  
5 regarding a settlement conference, Rule 16(f) is triggered. *See, e.g., Ayers v. City of Richmond*,  
6 895 F.2d 1267, 1270 (9th Cir. 1990).

7 Rule 16(f) is “broadly remedial and its purpose is to encourage forceful judicial  
8 management.” *Sherman v. United States*, 801 F.2d 1133, 1135 (9th Cir. 1986) (*per curiam*). When  
9 a court determines that Rule 16(f) has been triggered, it has broad discretion in fashioning an  
10 appropriate sanction. *See, e.g., Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1397 (9th Cir.  
11 1993). Violations of orders are “neither technical nor trivial,” *Martin Family Trust v.*  
12 *Heco/Nostalgia Enters. Co.*, 186 F.R.D. 601, 603 (E.D. Cal. 1999), and can have severe  
13 ramifications. Rule 16(f) itself provides that courts may issue “any just orders.” The range of  
14 sanctions include those authorized by Rule 37(b)(2)(A)(ii)-(vii), such as entry of case-dispositive  
15 sanctions. Fed. R. Civ. P. 16(f)(1). Although not expressly enumerated, the imposition of a fine  
16 is also among the “just orders” authorized by Rule 16(f). *See, e.g., Nick v. Morgan’s Food, Inc.*,  
17 270 F.3d 590, 595-96 (8th Cir. 2001).

### 18 **III. ANALYSIS**

19 As noted above, the order to show cause presently before the Court arises out of the  
20 violation of Defendant Yang and Mr. Aquino of the fourth order to submit a settlement statement,  
21 which resulted in the vacation of the November settlement conference. That order to show cause  
22 identifies five different potential repercussions for that violation: (1) entry of default judgment,  
23 (2) initiation of contempt proceedings, (3) award of further attorney’s fees, (4) imposition of fines  
24 of up to \$10,000, and (5) referral of Mr. Aquino to the Nevada State Bar for potential disciplinary  
25 proceedings. The Court will address each issue in turn below.

#### 26 **A. DEFAULT JUDGMENT**

27 The Court first addresses default judgment. In particular, the Court must decide whether  
28 this harsh, case-dispositive sanction against Defendant Yang is warranted and, if so, the amount



1 of damages and fees that should be awarded. For the reasons discussed below, the undersigned  
2 recommends that default judgment be entered against Defendant Yang and that damages be set in  
3 the amount of \$81,319 in compensatory damages and \$162,638 in punitive damages, as well as  
4 \$2,564 in additional attorney's fees.

5           1.       Appropriateness of Entering to Default Judgment

6           Courts are mindful that entry of default judgment is a severe sanction that is justified by  
7 willfulness, bad faith, or fault. *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482  
8 F.3d 1091, 1096 (9th Cir. 2007). When considering whether to impose default judgment, courts  
9 weigh five factors identified by the Ninth Circuit: (1) the public's interest in expeditious resolution  
10 of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking  
11 sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability  
12 of less drastic sanctions. *Id.* This is not a "mechanical" test, but rather provides courts with a way  
13 to think about the appropriate result. *Id.* The Court addresses each factor in turn below.

14                   a.       Public Interest in Expeditious Resolution of Litigation

15           Where an order is violated, the first factor supports case-dispositive sanctions. *Adriana*,  
16 913 F.2d 1412. "Orderly and expeditious resolution of disputes is of great importance to the rule  
17 of law. By the same token, delay in reaching the merits, whether by way of settlement or  
18 adjudication, is costly in money, memory, manageability, and confidence in the process." *In re*  
19 *Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006).

20           Defendant Yang violated the fourth order to submit a settlement statement, which required  
21 the vacation of the November settlement conference. This behavior has thwarted the expeditious  
22 resolution of the case, and supports entry of default judgment.

23                   b.       Court's Need to Manage its Docket

24           Where an order is violated, the second factor also supports case-dispositive sanctions.  
25 *Adriana*, 913 F.2d at 1412. It has long been recognized that the Court's inherent power to control  
26 its docket includes the ability to issue severe sanctions, such as entering default judgment, when  
27 appropriate given the circumstances. *See Thompson v. Housing Auth. of City of Los Angeles*, 782  
28 F.2d 829, 831 (9th Cir. 1986) (*per curiam*). Indeed, the Supreme Court has noted that case-

1 dispositive sanctions “must be available to the district court in appropriate cases, not merely to  
2 penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who  
3 might be tempted to such conduct in the absence of such a deterrent.” *National Hockey League v.*  
4 *Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976).

5 Defendant Yang’s violation of the fourth order to submit a settlement statement thwarted  
6 the advancement of the case by making it difficult for the Court to effectively manage its docket.  
7 As noted above, Defendant Yang’s violation required the vacation of the November settlement  
8 conference. That was not an isolated occurrence. In the context of the other violations, Defendant  
9 violated four orders to submit a settlement statement, Docket Nos. 58, 61, 62, 76, which resulted  
10 in the Court vacating the settlement conference on two separate occasions, Docket Nos. 63, 77.  
11 As a direct result of Defendant Yang’s misconduct, the usually routine matter of holding a  
12 settlement conference has become impossible. Moreover, the misconduct culminated in a  
13 significant delay of trial, which was scheduled to commence months ago, and has not yet been  
14 reset in light of the sanctions proceedings. *See* Docket Nos. 60, 68, 84. This factor also supports  
15 entry of default judgment.

16 c. Risk of Prejudice to the Opposing Party

17 Actions that impair an opposing party’s ability to go to trial or interfere with the rightful  
18 decision of the case are prejudicial. *See Adriana*, 913 F.2d at 1412. Prejudice may also consist of  
19 “costs or burdens of litigation” incurred because of the misconduct. *Phenylpropanolamine Prods.*,  
20 460 F.3d at 1228. “Settlement conferences provide an important vehicle for the parties to attempt  
21 to resolve their disputes.” *Hologram USA, Inc. v. Pulse Evolution Corp.*, Case No. 2:14-cv-0772-  
22 GMN-NJK, 2015 WL 5165390, at \*3 (D. Nev. Sept. 3, 2015), *objections overruled*, 2016 WL  
23 2757377 (D. Nev. May 11, 2016). The cost and delay associated with behavior that interferes with  
24 the ability to conduct a settlement conference create a sufficient risk of prejudice to the opposing  
25 party for this factor to weigh in favor of case-dispositive sanctions. *See Bykov v. 7435 159th Place*  
26 *NE, LLC*, Case No. C 08-0802-RAJ, 2009 WL 10694432, at \*2 (W.D. Wash. Apr. 15, 2009); *see*  
27 *also BP W. Coast Prods. LLC v. Crossroad Petro., Inc.*, Case No. 12-cv-665-JLS-JLB, 2017 WL  
28 4586350, at \*5 (S.D. Cal. Oct. 13, 2017), *adopted*, 2017 WL 5864680 (S.D. Cal. Nov. 29, 2017).

1 As noted above, a mandatory settlement conference was ordered by United States District  
2 Judge Jennifer A. Dorsey. Docket No. 56. The misconduct of Defendant Yang required that the  
3 settlement conference be vacated on two separate occasions. Docket Nos. 63, 77. In light of the  
4 pattern of violations and Defendant Yang's abandonment of this case, it is clear that the Court  
5 cannot hold a settlement conference in this case. The misconduct has interfered with the rightful  
6 resolution of this case. Moreover, that misconduct resulted in Plaintiffs' expenditure of  
7 unnecessary costs both with respect to the vacated settlement conferences and the three orders to  
8 show cause. The misconduct has also significantly delayed this case. There is a clear risk of  
9 prejudice in these circumstances and this factor also supports entry of default judgment.

10 d. Public Policy Favoring Disposition of Cases on their Merits

11 The public policy favoring disposition of cases on their merits strongly counsels against  
12 case-dispositive sanctions. *See, e.g., Phenylpropanolamine Prods.*, 460 F.3d at 1228. Although  
13 this factor may cut against recommending case-dispositive sanctions, it is not enough—standing  
14 alone—to prevent such a recommendation.

15 e. Availability of Less Drastic Sanctions

16 To determine whether lesser sanctions are available such that case-dispositive sanctions  
17 are not warranted, the Ninth Circuit looks to (1) whether this Court considered lesser sanctions;  
18 (2) whether it tried lesser sanctions; and (3) whether it warned the recalcitrant party about the  
19 possibility of case-dispositive sanctions. *See, e.g., Connecticut General Life Insurance*, 482 F.3d  
20 at 1096. The Court may consider all of the offending party's conduct when making its  
21 determination of the appropriate sanction. *Adriana*, 913 F.2d at 1411-12. The disobedient party's  
22 conduct must be due to willfulness, fault, or bad faith for a case-dispositive sanction to be  
23 appropriate. *Connecticut General Life Insurance*, 482 F.3d at 1096.

24 As a starting point, the Court finds that the requisite fault to impose case-dispositive  
25 sanctions exists in this case. Defendant Yang has engaged in a long pattern of misconduct,  
26 including violating four orders to submit settlement statements, an order to pay attorney's fees,  
27 and an order to appear to show cause. No justification of any kind has been provided with respect  
28 to Defendant Yang, and it is clear that Defendant Yang has simply abandoned this case. Defendant

1 Yang's pattern of repeatedly violating orders manifests the requisite fault for the imposition of  
2 case-dispositive sanctions. *Cf. Sigliano v. Mendoza*, 642 F.2d 309, 310 (9th Cir. 1981).

3 The imposition of case-dispositive sanctions is also supported by the repeated warnings  
4 that failing to comply with the Court's orders could result in the imposition of severe sanctions,  
5 up to and including case-dispositive sanctions. Defendant Yang's misconduct has continued  
6 unabated notwithstanding numerous warnings, Docket No. 57 at 3, Docket No. 61, Docket No. 62  
7 at 2, Docket No. 76 at 5, Docket No. 77 at 2, and an earlier imposition of monetary sanctions,  
8 Docket No. 76 at 4, 6. In the order imposing sanctions issued on October 15, 2018, the Court  
9 declined to recommend dispositive sanctions with the caveat that the Court expected "the monetary  
10 sanctions imposed herein will suffice for Defendant and Mr. Aquino to right the ship so that this  
11 case can be decided on its merits." Docket No. 76 at 5. The Court left no doubt, however, that  
12 such leniency would not be repeated:

13 **THE COURT EXPECTS STRICT COMPLIANCE MOVING**  
14 **FORWARD WITH ITS ORDERS AND ALL GOVERNING**  
15 **RULES. FAILURE BY DEFENDANT AND/OR MR. AQUINO**  
16 **TO COMPLY MAY RESULT IN THE IMPOSITION OF**  
17 **SANCTIONS, UP TO AND INCLUDING, CASE-**  
**DISPOSITIVE SANCTIONS AND CONTEMPT**  
**PROCEEDINGS. THERE WILL BE NO FURTHER**  
**WARNINGS PROVIDED.**

18 *Id.* (emphasis in original). Almost immediately thereafter, Defendant Yang violated that same  
19 order to submit a settlement statement by October 24, 2018. *See* Docket No. 77. The Court then  
20 set a show cause hearing, explicitly requiring Defendant Yang to appear in person and warning  
21 that "**FAILURE TO APPEAR AS ORDERED WILL RESULT IN THE IMPOSITION OF**  
22 **SEVERE SANCTIONS**" such as entry of default judgment, *id.* at 1, but Defendant Yang violated  
23 that order by failing to appear on November 9, 2018, Docket No. 81. In short, the Court has  
24 provided numerous warnings, including expressly contemplating that case-dispositive sanctions  
25 could be imposed, and has imposed monetary sanctions. These warnings and sanctions have  
26 proven insufficient to deter continued misconduct, even in their immediate aftermath, which  
27 further supports the entry of default judgment at this time.  
28

1 Given this pattern of conduct, sanctions less severe than default judgment would be  
2 insufficient.

3 f. Conclusion as to Entering to Default Judgment

4 For the reasons outlined above, the undersigned concludes that entry of default judgment  
5 against Defendant Yang is appropriate at this time.

6 2. Compensatory Damages to be Included in Default Judgment

7 Having found that the entry of default judgment is proper, the undersigned turns to the  
8 amount that should be awarded therein. A party must prove the amount of damages to be awarded  
9 through default judgment. *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498  
10 (C.D. Cal. 2003). The Court has wide discretion in determining the amount of damages to award.  
11 *HTS, Inc. v. Boley*, 954 F. Supp. 2d 927, 947 (D. Ariz. 2013). The Court may rely on the  
12 declaration submitted by the movant and may also rely on testimony given at an evidentiary  
13 hearing. *Cf.* Fed. R. Civ. P. 55(b)(2). The burden with respect to proving up damages is “relatively  
14 lenient.” *Philip Morris*, 219 F.R.D. at 498. Nonetheless, damages must be proven to a “reasonable  
15 certainty.” *Jones v. Zimmer*, Case No. 2:12-cv-01578-JAD-NJK, 2016 WL 1122852, at \*2 (D.  
16 Nev. Mar. 22, 2016).

17 a. Lost Opportunities as Poker Dealers

18 Plaintiffs seek compensatory damages for lost opportunities to obtain employment as  
19 traveling poker dealers in the amount of \$70,000. *See* Docket No. 66 at 6-7. At the hearing,  
20 Defendant Yang’s counsel challenged whether causation had been established for these damages.  
21 *See, e.g.*, Hearing Rec. (11/08/2018) at 11:23 – 11:24, 11:27 a.m. That challenge is not persuasive.  
22 Plaintiffs’ complaint provides well-pled allegations regarding lost poker dealer employment  
23 opportunities caused by Defendant’s conduct. *See, e.g.*, Compl. (Docket No. 1-1) at ¶¶ 37-48, 72.  
24 “The general rule of law is that upon default the factual allegations of the complaint, except those  
25 relating to the amount of damages, will be taken as true.” *Geddes v. United Fin’l Grp.*, 559 F.2d  
26 557, 560 (9th Cir. 1977). Hence, “proximate cause properly alleged in the complaint is admitted  
27 upon default.” *Roadrunner Transp. Servs., Inc. v. Tarwater*, Case No. SACV 10-1534 AG  
28 (MLGx), 2013 WL 12171729, at \*1 (C.D. Cal. Aug. 9, 2013), *aff’d*, 642 Fed. Appx. 759 (9th Cir.

1 2016). At any rate, Mr. Lewis provided testimony sufficient to establish causation at the prove-up  
2 hearing. *See, e.g.*, Hearing Rec. (11/08/2018) at 10:45 – 10:46, 10:50-10:51 a.m.

3 As to the amount of these damages, Plaintiffs presented evidence as to their loss of income  
4 as traveling dealers that resulted from Defendant Yang’s actions including, most notably, their tax  
5 returns showing a reduction in wages. *See* Docket No. 66. For example, Plaintiffs reported  
6 \$52,392 in wages in 2015<sup>8</sup> but only \$36,740 in wages in 2016. *Compare* Docket No. 66 at 49 *with*  
7 *id.* at 63. Plaintiffs have filed a declaration and a further tax return indicating that their taxable  
8 wages were \$37,117 for 2017, and will be approximately \$38,000 for 2018. Docket Nos. 74, 75.  
9 In short, the evidence establishes compensatory damages for the loss of income related to  
10 employment as traveling poker dealers in the amounts of \$15,652 for 2016, \$15,275 for 2017, and  
11 \$14,392 for 2018, for a total of \$45,319.

12 b. Lost Promotional Opportunities

13 Plaintiffs also seek compensatory damages for lost promotional opportunities for Mr.  
14 Lewis caused by Defendant Yang’s tortious conduct. *See, e.g.*, Docket No. 79 at 3. Mr. Lewis  
15 testified at some length as to these damages. *See* Hearing Rec. (11/08/2018) at 10:58 - 11:04,  
16 11:22 – 11:23, 11:39 -11:40 a.m. In particular, Mr. Lewis testified that he had applied to the World  
17 Series of Poker for a supervisor position in 2015 just before the defamation at issue in this case, at  
18 which time he was interviewed. He was told that he was well-qualified but needed another year  
19 of experience to have proper seniority for the job. He was encouraged to reapply in 2016. Given  
20 Defendant Yang’s conduct, however, Mr. Lewis was not hired by the World Series of Poker even  
21 as a dealer in 2016. Moreover, despite being interviewed for a supervisor position and encouraged  
22 to reapply previously, he was not selected for an interview for a supervisor position in either 2017  
23 or 2018. At the same time, Mr. Lewis testified that he was sufficiently qualified during this period  
24 to work as a supervisor and, indeed, had been hired to be a supervisor by another “A Circuit” event  
25 in Atlantic City with which Defendant Yang is not affiliated. Mr. Lewis further testified that the  
26 introductory pay for supervisors is published and widely-known within the dealer community, and

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27 <sup>8</sup> Their income in 2013 and 2014 was similar to their wages in 2015. *See* Docket No. 66  
28 at 14 (reporting \$52,746 in wages for 2013); *id.* at 33 (reporting \$50,398 in wages in 2014).

1 that the starting supervisor pay for the World Series of Poker is an additional \$12,000 per year.  
2 This testimony suffices to establish causation and to prove the amount of these damages to a  
3 reasonable certainty.

4 In short, the evidence establishes compensatory damages for the loss of income related to  
5 lost supervisory advancement for Mr. Lewis in the amount of \$12,000 for the years of 2016, 2017,  
6 and 2018, for a total of \$36,000.

7 c. Total Compensatory Damages

8 Accordingly, the undersigned recommends that default judgment include an award of  
9 compensatory damages in the amount of \$81,319.

10 3. Punitive Damages to be Included in Default Judgment

11 Plaintiffs seek an award of punitive damages in an amount sufficient to deter further  
12 misconduct. Docket No. 79 at 2-4. Punitive damages “are never awarded as of right.” *Jones*,  
13 2016 WL 1122852, at \*1. Even upon entry of default judgment, punitive damages must still be  
14 proven by the movant. *See id.* Under Nevada law, tort claims may provide a basis for an award  
15 of punitive damages “where it is proven by clear and convincing evidence that the defendant has  
16 been guilty of oppression, fraud or malice, express or implied.” N.R.S. 42.005(1). “Malice” is  
17 established by, *inter alia*, “conduct which is intended to injure a person.” N.R.S. 42.001(3).

18 Plaintiffs provided clear and convincing evidence of malice in this case. Most obviously,  
19 Defendant Yang admitted to engaging in tortious conduct for the very purpose of injuring  
20 Plaintiffs. *See* Docket No. 56 at 6 (“Yang further admits that these false allegations were intended  
21 to prevent the Lewises from being offered future employment as traveling poker dealers on the  
22 tournament circuit”). Defendant Yang’s malice has been further established by the testimony of  
23 Mr. Lewis, which detailed tortious conduct specifically designed to harm Plaintiffs that has  
24 continued at least until the prove-up hearing, despite the initiation of this litigation and despite the  
25 granting of summary judgment against Defendant Yang as to liability. *See, e.g.*, Hearing Rec.  
26 (11/08/2018) at 11:04 – 11:14 a.m. In short, Defendant Yang has engaged in tortious behavior  
27 designed for the very purpose of injuring Plaintiffs, and such conduct is properly characterized as  
28 malicious such that the imposition of punitive damages is warranted.

1 A number of factors may be considered in determining the amount of punitive damages to  
2 award, including the need for deterrence. *E.g., Bongiovi v. Sullivan*, 138 P.3d 433, 451-52 (Nev.  
3 2006). In this case, Defendant Yang's willful, egregious and continuing misconduct demonstrates  
4 a strong need for deterrence. As such, the undersigned will recommend that punitive damages be  
5 calculated at twice the amount of compensatory damages. *Cf. Roul v. George*, Case No. 2:13-cv-  
6 01686-GMN-CWH, 2014 WL 1308607, at \*7 (D. Nev. Mar. 10, 2014), *adopted*, 2014 WL  
7 1305044 (D. Nev. Mar. 28, 2014) (imposing punitive damages on default judgment in the amount  
8 of triple the compensatory damages).

9 Accordingly, the undersigned recommends that default judgment include an award of  
10 punitive damages in the amount of \$162,638.

11 4. Attorney's Fees to be Included in Default Judgment

12 Plaintiffs seek an award of case-wide attorney's fees to be included in the default judgment.  
13 Docket No. 66 at 7-8; *see also* Docket No. 79 at 4-6.<sup>9</sup> Parties generally do not recover their  
14 attorney's fees for prevailing in litigation absent some statutory provision allowing an award of  
15 fees. *E.g., Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975). In diversity  
16 cases, federal courts apply state law in determining whether to award attorney's fees. *Canada Life*  
17 *Assur. Co. v. LaPeter*, 563 F.3d 837, 847 (9th Cir. 2009). In seeking attorney's fees in this case,  
18 Plaintiffs invoke Nevada statutory authority providing that attorney's fees may be awarded where  
19 a "defense of the opposing party was brought or maintained without reasonable ground." N.R.S.  
20 18.010(2)(b). The award of attorney's fees under this provision is an issue entrusted to the  
21 discretion of the Court. *See Boulware v. State of Nev., Dept. of Human Resources*, 960 F.2d 793,  
22 799 (9th Cir. 1992). This provision is to be liberally construed in favor of awarding fees in all  
23 appropriate situations. N.R.S. 18.010(2)(b)

24 The record in this case supports a finding that Defendant Yang's defense was maintained  
25 without reasonable ground. Defendant Yang has brought forward no evidence in support of any  
26 defense of the defamation claim brought by Plaintiffs. To the contrary, Defendant Yang admitted

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27 <sup>9</sup> The Court separately addresses the narrower issue of whether to award fees incurred as a  
28 result of the violation of its orders.



1 to liability in this case during the discovery process, which led to the entry of summary judgment  
2 as to liability. *See* Docket No. 56 at 6-7.

3 When state law provides the basis for a party's entitlement to attorney's fees, federal courts  
4 apply state law to calculate the amount of those fees. *See Mangold v. Cal. Public Utilities Com'n*,  
5 67 F.3d 1470, 1478 (9th Cir. 1995). In Nevada, "the method upon which a reasonable fee is  
6 determined is subject to the discretion of the court," which "is tempered only by reason and  
7 fairness." *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 548-49 (Nev. 2005) (quoting  
8 *University of Nevada v. Tarkanian*, 879 P.2d 1180, 1188, 1186 (Nev. 1994)). One permissible  
9 method of calculation is the lodestar approach, which involves multiplying "the number of hours  
10 reasonably spent on the case by a reasonable hourly rate." *See Shuette*, 124 P.3d at 549 & n.98  
11 (quoting *Herbst v. Humana Health Ins. of Nevada*, 781 P.2d 762, 764 (Nev. 1989)). In calculating  
12 attorneys' fees, Nevada law also requires courts to consider the qualities of the advocate, the  
13 character of the work done, the work actually performed by the lawyer, and the result. *See, e.g.*,  
14 *Hornwood v. Smith's Food King No. 1*, 807 P.2d 208, 213 (Nev. 1991) (citing *Brunzell v. Golden*  
15 *Gate National Bank*, 445 P.2d 31, 33 (Nev. 1969)).

16 Calculating attorney's fees in this case is not an easy task. Plaintiffs filed paperwork for  
17 \$18,320.96 in fees billed through August 8, 2018. *See* Docket No. 79 at 5.<sup>10</sup> The supporting  
18 documentation includes extensive time spent on aspects of this case that did not directly involve  
19 the claim against Defendant Yang, such as responding to the motions to dismiss filed by other  
20 defendants and seeking reconsideration of the denial of the motion to amend the complaint to add  
21 Horseshoe Hammond as a defendant. *See id.* at 12, 13-14; *see also* Docket No. 23 (response to  
22 motion to dismiss); Docket No. 24 (response to motion to dismiss); Docket No. 39 (motion for  
23 reconsideration). No explanation has been provided why attorney's fees incurred for such  
24 activities are recoverable from Defendant Yang. The documentation also includes time apparently  
25 spent by attorney "BL," without any indication as to who that attorney is, what qualifications she  
26 possesses, or why it was necessary to have multiple attorneys working on the matter. *See, e.g.*,

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27  
28 <sup>10</sup> The Court previously concluded that the hourly rate of Mr. Smith (\$200) and his  
paralegal (\$120) are reasonable. *See* Docket No. 76 at 4. The Court applies the same rates here.

1 Docket No. 79 at 14-15. Moreover, the documentation includes some time for which attorney's  
2 fees were previously awarded with respect to the orders to show cause arising out of the  
3 cancellation of the August settlement conference. *Compare id.* at 21 (identifying time spent  
4 preparing settlement statement) *with* Docket No. 76 at 4 (awarding attorney's fees incurred in  
5 conjunction with the cancellation of the August settlement conference).

6 When a movant seeking attorney's fees submits insufficient documentation, the Court is  
7 permitted to simply reduce the fee to a reasonable amount. *Fischer v. SJB-P.D. Inc.*, 214 F.3d  
8 1115, 1121 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). The documentation is clear  
9 that time was expended specific to Defendant Yang with respect to propounding discovery (Docket  
10 No. 79 at 17-18) and participating in summary judgment motion practice (*id.* at 19-20). With  
11 respect to discovery, Mr. Smith expended approximately seven hours. The hours expended were  
12 largely reasonable, but it appears .6 hours were expended by Mr. Smith in physically delivering  
13 discovery to Defendant Yang's counsel. *See id.* at 18. That time will be deducted as fees should  
14 not be awarded for an attorney conducting clerical work. *See, e.g., Cruz v. Alhambra School Dist.*,  
15 601 F. Supp. 2d 1183, 1193 (C.D. Cal. 2009).<sup>11</sup> With respect to summary judgment, Mr. Smith  
16 expended approximately 5.1 hours and his paralegal expended 2.2 hours. *See* Docket No. 79 at  
17 19-20. The expenditure of these hours was reasonable.

18 Hence, the lodestar should include 11.5 hours for work performed by Mr. Smith and 2.2  
19 hours for work performed by his paralegal. Accordingly, the undersigned calculates the reasonable  
20 attorney's fees incurred with respect to the claim against Defendant Yang for which fees have not  
21 already been awarded to be \$2,564.

## 22 5. Conclusion as to Default Judgment

23 For the reasons discussed above, the undersigned recommends that default judgment be  
24 entered against Defendant Yang. The undersigned further recommends that the default judgment  
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27 <sup>11</sup> The unnamed attorney expended time on that discovery, *see* Docket No. 79 at 17, for  
28 which the undersigned declines to award fees. A paralegal also appeared to expend time on that  
discovery, but charged an hourly rate of \$0 for doing so. *See id.* As such, the time for attorney's  
fees with respect to discovery will be limited that that expended by Mr. Smith.

1 include \$81,319 in compensatory damages and \$162,638 in punitive damages, as well as \$2,564  
2 in additional attorney's fees.

3 B. CONTEMPT PROCEEDINGS

4 Contempt proceedings are generally imposed to coerce compliance. As such, the  
5 imposition of case-dispositive sanctions to address a recalcitrant litigant's disobedience may  
6 obviate the need for contempt proceedings. *See Danning v. Lavine*, 572 F.2d 1386, 1389-90 (9th  
7 Cir. 1978). The currently-pending order to show cause is directed specifically at the failure of  
8 Defendant Yang and Mr. Aquino to submit a settlement statement by October 24, 2018. *See*  
9 Docket No. 77 (addressing violation of order at Docket No. 76 at 6). As noted above, the  
10 undersigned recommends that default judgment be entered against Defendant Yang, which would  
11 moot any need for coercion to comply with the requirements for having a settlement conference.  
12 Hence, in the event default judgment is entered, contempt proceedings designed to coerce  
13 compliance with the Court's order to submit a settlement statement is unnecessary.<sup>12</sup>

14 C. ATTORNEY'S FEES<sup>13</sup>

15 The Court previously ordered Defendant Yang and Mr. Aquino to pay Plaintiffs' attorney's  
16 fees of \$3,311. Docket No. 76 at 4-5. That order imposed this sanction against Defendant Yang  
17 and Mr. Aquino jointly and severally. *See id.*; *see also* Fed. R. Civ. P. 16(f)(2) (attorney's fees  
18 may be ordered against "the party, its attorney, *or both*" (emphasis added)). The fees had to be  
19 paid by October 29, 2018, *id.*, but no payment has been made, *see* Docket No. 78. The Court again  
20 **ORDERS** Defendant Yang and Mr. Aquino to pay these attorney's fees of \$3,311, this time by  
21 May 1, 2019. **FAILURE TO PAY THESE FEES MAY RESULT IN FURTHER**

22  
23  
24 <sup>12</sup> The Court is ordering Mr. Aquino to pay fines and is ordering Mr. Aquino and Defendant  
25 Yang to pay attorney's fees to Plaintiffs. *See* Sections III.C., III.D. The need for obedience with  
26 those orders is not impacted by the entry of default judgment. To the extent those orders are  
violated, the Court will consider whether to initiate contempt proceedings on those issues.

27 <sup>13</sup> This section involves whether the Court should order a payment of attorney's fees  
28 specific to the violations of the Court's orders pursuant to Rule 16(f). The undersigned separately  
addresses the amount of attorney's fees that should be included in the default judgment pursuant  
to N.R.S. 18.010(2)(b).

1 **SANCTIONS AND DISCIPLINE, INCLUDING INITIATION OF CONTEMPT**  
2 **PROCEEDINGS.**

3 The currently-pending order to show cause also raises the potential for the imposition of  
4 additional attorney's fees incurred as a result of the more recent violations by Defendant and Mr.  
5 Aquino. Docket No. 77. Given the previous award, the Court instructed Plaintiffs to identify  
6 additional time that has been incurred as a result of appearing at the latest show cause hearing and  
7 making various recent filings. *Id.* at 1 n.1. Plaintiffs did not identify at that hearing additional  
8 time for which they are seeking an award of attorney's fees for the above work. Accordingly, the  
9 Court declines to award additional attorney's fees arising out of this time.

10 D. COURT FINES

11 The Court previously ordered Mr. Aquino to pay a fine of \$2,000 for violating numerous  
12 Court orders. Docket No. 76 at 4-5. That fine had to be paid by October 29, 2018, *id.*, but no  
13 payment was made. The Court again **ORDERS** Mr. Aquino to pay that fine of \$2,000, this time  
14 by May 1, 2019. **FAILURE TO PAY THIS FINE MAY RESULT IN FURTHER**  
15 **SANCTIONS AND DISCIPLINE, INCLUDING INITIATION OF CONTEMPT**  
16 **PROCEEDINGS.**

17 The currently-pending order to show cause also raises the potential for the imposition of  
18 additional fines given the more recent violations by Defendant Yang and Mr. Aquino. Docket No.  
19 77.<sup>14</sup> In particular, in the same order imposing the previous fine on Mr. Aquino, the Court also  
20 (for the fourth time) ordered Mr. Aquino to submit a settlement statement, this time by October  
21 28, 2018. Docket No. 76 at 6. Mr. Aquino violated that order to submit a settlement statement  
22 and did not seek an extension or otherwise notify the Court indicating that he was unable to  
23 comply. Mr. Aquino has established no substantial justification for the violation. Moreover, Mr.  
24 Aquino violated that order despite his violations of three previous orders to submit a settlement  
25 statement, the issuance of numerous warnings, and the imposition of sanctions in the form of  
26 attorney's fees and a fine. When an attorney continues to engage in the same misconduct despite  
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28 <sup>14</sup> Given the other repercussions already discussed elsewhere as to Defendant Yang, the Court declines to impose a fine on Defendant Yang.

1 the previous imposition of sanctions, it becomes clear that the previous sanctions proved  
2 insufficient and additional, more significant sanctions are appropriate. *See, e.g., Garcia v. Geico*  
3 *Cas. Co.*, Case No. 2:13-cv-00731-JCM-NJK, 2015 U.S. Dist. Lexis 2155, at \*7-10 (D. Nev. Jan.  
4 6, 2015) (imposing quintupled fines for repetition of same misconduct). Given that Mr. Aquino  
5 has continued to engage in the same misconduct despite the previous imposition of a \$2,000 fine,  
6 his unjustified violation of the fourth order to submit a settlement statement merits the imposition  
7 of a \$4,000 fine.<sup>15</sup> This fine is to be paid personally by Mr. Aquino and shall not be passed on in  
8 any way to his client. Payment of the fine shall be made to the “Clerk, U.S. District Court” no  
9 later than May 1, 2019. **FAILURE TO PAY THIS FINE MAY RESULT IN FURTHER**  
10 **SANCTIONS AND DISCIPLINE, INCLUDING INITIATION OF CONTEMPT**  
11 **PROCEEDINGS.**

12 E. DISCIPLINARY REFERRAL

13 Pursuant to Canon 3(B)(5) of the Code of Conduct for United States Judges, “[a] judge  
14 should take appropriate action upon learning of reliable evidence indicating the likelihood that . .  
15 . a lawyer violated applicable rules of professional conduct.” More specifically, “[j]udges are  
16 obligated to alert disciplinary authorities to possible unethical conduct by attorneys.” *United*  
17 *States v. Mendoza*, 468 F.3d 1256, 1262 (10th Cir. 2006). Repeated failure to comply with the  
18 Court’s orders is an appropriate basis for referral to the Nevada State Bar for investigation. *See*  
19 *Weddell*, 261 P.3d at 1085 n.9; *see also* Local Rule IA 11-7(a) (“An attorney. . . who fails to  
20 comply with this court’s rules or orders” is subject to appropriate disciplinary action).

21 As noted above, Mr. Aquino has violated numerous orders in this case. *See* Docket No. 58  
22 (order to submit settlement statement), Docket No. 61 (same), Docket No. 62 (same), Docket No.  
23 71 (order to appear at show cause hearing), Docket No. 76 (order to submit settlement statement),  
24 *id.* (order to pay attorney’s fees), *id.* (order to pay fine). He has continued to engage in this conduct  
25 after being warned and sanctioned. *See, e.g.,* Docket No. 76 (warning and sanctioning Mr.  
26  
27

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28 <sup>15</sup> To be crystal clear, this fine is in addition to the earlier, unpaid fine. Therefore, Mr. Aquino currently owes \$6,000 in fines.

1 Aquino). Given Mr. Aquino's recalcitrance in this case, the Court **REFERS** this matter to the  
2 Nevada State Bar for potential disciplinary proceedings.

3 The Clerk's Office is **INSTRUCTED** to provide a copy of this order to:

- 4 • Chief United States District Judge Gloria M. Navarro
- 5 • Clerk of Court Debra Kempf
- 6 • State Bar of Nevada  
7 Attn: Office of Bar Counsel  
8 3100 Charleston Blvd., Suite 100  
Las Vegas, NV 89102

9 **IV. CONCLUSION**

10 The Court hereby **ORDERS** that Defendant Yang and Mr. Aquino shall pay the  
11 previously-ordered attorney's fees of \$3,311 by May 1, 2019. The Court further **ORDERS** that  
12 Mr. Aquino shall pay the previously-ordered fine of \$2,000 by May 1, 2019. The Court further  
13 **ORDERS** that Mr. Aquino shall pay an additional fine of \$4,000 by May 1, 2019. Proof of  
14 payment shall be filed on the docket within seven days of the payments being made.

15 The Court hereby **REFERS** Mr. Aquino to the state bar for a disciplinary investigation.

16 The Court **DECLINES** to initiate contempt proceedings at this time, but may choose to do  
17 so in the future if the circumstances so warrant.

18 The undersigned hereby **RECOMMENDS** that default judgment be entered against  
19 Defendant Yang. The undersigned further recommends that the default judgment include \$81,319  
20 in compensatory damages and \$162,638 in punitive damages, as well as \$2,564 in additional  
21 attorney's fees.

22 IT IS SO ORDERED.

23 Dated: April 11, 2019

24   
25 Nancy J. Koppe  
United States Magistrate Judge

26 **NOTICE**

27 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must**  
28 **be in writing and filed with the Clerk of the Court within 14 days of service of this document.**

1 The Supreme Court has held that the courts of appeal may determine that an appeal has been  
2 waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S.  
3 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified  
4 time and (2) failure to properly address and brief the objectionable issues waives the right to appeal  
5 the District Court's order and/or appeal factual issues from the order of the District Court.  
6 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708  
7 F.2d 452, 454 (9th Cir. 1983).